

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ALTERRA AMERICA INSURANCE CO.,

Plaintiff,

- against -

NATIONAL FOOTBALL LEAGUE, et al.,

Defendants.

Index No. 652813/2012 E

Hon. Andrea Masley

JOINT STATUS REPORT

DISCOVER PROPERTY & CASUALTY
INSURANCE CO., et al.,

Plaintiffs,

- against -

NATIONAL FOOTBALL LEAGUE, et al.,

Defendants.

Index No. 652933/2012 E

Hon. Andrea Masley

The parties jointly submit this status report to provide the Court with background on the above-captioned matters in advance of the conference scheduled for August 8, 2017.

1. **Nature of These Lawsuits:** The *Alterra* and *Discover* matters (together, “Actions”) are consolidated insurance coverage actions between (i) the National Football League and NFL Properties LLC (together, “NFL Parties”), and (ii) 34 liability insurers that issued policies of insurance to one or both of the NFL Policyholders during the past 60 years. The Actions contain various claims for and defenses to coverage in connection with the player concussion tort litigation described below.

2. **Description of the Underlying Player Concussion Tort Litigation:** The underlying tort litigation involves claims by thousands of former NFL players whose playing

careers date back as far as the 1950's seeking to hold the NFL Parties liable for neurological and other injuries that the tort plaintiffs allege resulted from concussive and sub-concussive impacts sustained by the players while playing football in the NFL. The tort plaintiffs originally filed claims in various courts across the country; all but a few of those claims were subsequently transferred to a multi-district litigation ("MDL") before Judge Anita Brody of the U.S. District Court for the Eastern District of Pennsylvania for coordinated pre-trial proceedings. The MDL has over time included more than 300 cases with more than 5,000 plaintiffs.

3. Status of the Player Concussion Tort Litigation: In 2014, the NFL Parties and the tort plaintiffs steering committee executed a class action settlement agreement. That settlement was approved by the MDL court on May 8, 2015 and became effective on January 7, 2017 after appeals by certain objectors to the settlement were denied or dismissed. Approximately 100 players or their families have opted out of the class settlement. Those actions remain pending before the MDL court. A Second Amended Master Administrative Long-Form Complaint and individual Short Form Complaints were recently filed in the opt-out actions. Under the MDL court's July 18, 2017 scheduling order, the NFL Parties have until September 25, 2017 to move to dismiss the opt-out lawsuits.

4. History of These Insurance Coverage Actions: In August 2012, Alterra America Insurance Company commenced this litigation by suing the NFL Parties in this Court. After being sued in California by the NFL Parties, a group of Travelers insurers¹ ("Travelers") filed a second action in this Court against the NFL Parties and other insurers. The California

¹ Discover Property & Casualty Insurance Company, St. Paul Protective Insurance Company, Travelers Property Casualty Company of America, Travelers Casualty & Surety Company and Travelers Indemnity Company.

action was stayed in favor of the New York actions. Motions to dismiss the New York actions were heard and decided by Justice Oing in March 2013, and initial discovery proceeded in this Court. Thereafter the litigation was largely stayed for a period of three-and-a-half years, during which time the class settlement of the underlying litigation was negotiated and approved. In November 2016, after the class settlement was approved by the Third Circuit Court of Appeals, Justice Oing lifted the stay. The NFL Parties subsequently added two additional insurers as defendants.

5. The Current Case Management Order: On November 14, 2016, Justice Oing issued a Case Management Order. *See Alterra* Dkt. 406. The Case Management Order called for the parties to submit amended complaints, responsive pleadings, and replies to responsive pleadings, which the parties filed between December 2016 and April 2017. In their respective pleadings, the NFL Parties and insurers have asserted various claims, cross-claims, counterclaims and/or defenses concerning insurance coverage for the underlying tort suits. The Case Management Order directed the parties to serve demands for discovery and inspection and initial interrogatories in early February 2017, responses to which were exchanged in March 2017 and June 2017. Document productions are underway, and fact depositions and expert reports and depositions are scheduled to follow. On May 25, 2017, the parties executed a stipulation amending various deadlines in the original Case Management Order. *See Alterra* Dkt. 419. A copy of that stipulation is attached hereto.

6. Status of Proceedings: The parties have been working diligently and in good faith to comply with the disclosure deadlines set out in the Case Management Order, as subsequently modified by stipulation of the parties. The parties have been engaged in a meet-and-confer process with the aim of resolving certain disputes that have arisen concerning the

parties' disclosure obligations. The parties hope to resolve those disputes without Court intervention, but respectfully reserve the right to bring issues to the Court's attention in the event of an impasse.

7. **Settlement Status:** To date, the NFL Parties and six of the insurer parties have resolved their disputes through settlement. The NFL Parties are currently engaged in settlement discussions with certain of the remaining insurer parties.

We look forward to appearing before Your Honor on August 8th.

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New York, NY

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